

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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YESH MUSIC, LLC,

Plaintiff,

-against-

THE SOCIETY OF TYPOGRAPHIC  
AFICIONADOS, INC., THIJS JANSSEN,  
an individual,

Defendants.

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**MEMORANDUM AND ORDER**

12-CV-865 (FB) (VVP)

*Appearances:*

*For the Plaintiff:*

THOMAS J. FITZGERALD, ESQ.  
Garbarini FitzGerald P.C.  
420 Lexington Avenue, Suite 2743  
New York, NY 10170

*For Defendant The Society of Typographic  
Aficionados, Inc.:*

PAUL F. CALLAN, ESQ.  
Callan, Koster, Brady & Brennan, L.L.P.  
1 Whitehall St., 10<sup>th</sup> Floor  
New York, NY 10004

**BLOCK, Senior District Judge:**

Plaintiff Yesh Music, LLC brings a copyright infringement suit against defendant The Society of Typographic Aficionados, Inc. ("SOTA"), a non-profit corporation dedicated to the promotion and study of type and typography, and defendant Thijs Janssen, a professional artist and designer who lives in Rotterdam. Janssen, who also goes by the name "superbruut," operates the website <http://SuperBruut.com> to promote his career. Plaintiff's copyright infringement claims relate to the following Twitter posting by SOTA:

Dutch design student @superbruut produced an amazing alternate identity for TypeCon2011: Surge as his grad project. [xrl.us/superbruut](http://xrl.us/superbruut).

“TypeCon2011” refers to a conference organized by SOTA. The “[xrl.us/superbruut](http://xrl.us/superbruut)” segment was a hyperlink that linked to superbruut’s project, which related to TypeCon 2011. Plaintiff contends that its musical work, entitled “Anything You Synthesize,” was used as the soundtrack for the project and for TypeCon 2011’s advertising materials.

Defendant SOTA moved to dismiss the amended complaint.<sup>1</sup> Instead of responding with an opposing memorandum, plaintiff filed a Second Amended Complaint on July 17, 2012, purportedly pursuant to Federal Rule of Civil Procedure 15(a)(1). Because plaintiff already filed an amended complaint on May 18, 2012, plaintiff may not avail itself of Rule 15(a)(1). *See* Fed. R. Civ. P. 15(a)(1) (permitting a party to “amend its pleading *once* as a matter of course,” provided that certain requirements are met (emphasis added)). Nevertheless, Rule 15(a)(2) authorizes the Court to “freely give leave [to amend a pleading] when justice so requires.” Accordingly, the Court grants plaintiff leave to file its Second Amended Complaint and deems it filed as of July 17, 2012. *See* Second Am. Compl., Ex. B to Def.’s Letter Br., July 18, 2012.

Defendant SOTA will have until April 9, 2013, to submit a letter brief (not to exceed five pages) addressing whether the Second Amended Complaint resolves the issues raised in its motion to dismiss. Plaintiff will then have until April 23, 2013, to submit a responsive letter brief (not to exceed five pages).

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<sup>1</sup>Defendant Janssen has neither moved to dismiss nor taken any other action in connection with this lawsuit.

At this time, the Court denies defendant's motion to dismiss as moot; however, the Court will reinstate the motion if requested in defendant's letter brief.

**SO ORDERED.**

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FREDERIC BLOCK  
Senior United States District Judge

Brooklyn, New York  
March 25, 2013